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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,160	10/23/2003	Ulrich Deiss	2001P13005WOUS	8357
46726	7590	09/21/2006	EXAMINER	
BSH HOME APPLIANCES CORPORATION INTELLECTUAL PROPERTY DEPARTMENT 100 BOSCH BOULEVARD NEW BERN, NC 28562			TRAN, HANH VAN	
		ART UNIT	PAPER NUMBER	
		3637		

DATE MAILED: 09/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/692,160	DEISS ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Hanh V. Tran	3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 July 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 8-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 8-22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____.                                     |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____.                         |

## **DETAILED ACTION**

1. This is the Final Office Action from the examiner in charge of this application in response to applicant's amendment dated 7/5/2006.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 8-17, 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 8 and 15, each of the limitations "said adjustment lever and said basket support plate engage automatically" and "said adjustment lever and said basket support plate disengage" is vague, thus indefinite for failing to clearly define whether the lever and the support plate engage to or disengage from each other or some other element(s).

Claims 10, 16 and 20, the limitation of the catch hook having "an undercut for adjusting the actuation force" is vague, thus indefinite for failing to define how the undercut allows adjustment of the actuation force.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 8-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Germany 195 12 128 to Graute.

Graute discloses a device for adjusting the height position of a dishware basket comprising all the elements recited in the above listed claims including, such as shown in Figs 2-4, (1) a basket support plate 7 arranged on a side wall of the dishware basket formed from horizontally and vertically extending basket struts; said support plate 7 mounted on said basket struts and including rollers 9 mounted thereto; said support plate 7 adjustably mounted on said dishware basket at different height positions by an adjustment lever 15; said adjustment lever 15 swivelly mounted to said basket support plate 7 and including a handle end 16 located in a recess formed in said basket support plate 7; said adjustment lever 15 including a catch hook 17 arranged on said handle end 16 oriented to the dishware basket interior and located in said recess; said adjustment lever 15 and said basket support plate 7 engage automatically when said dishware basket is moved from a lower height position into and upper height position on said horizontally extending basket struts; said adjustment lever 15 and said basket support plate 7 disengage after a handle part on said handle end is actuated in the direction of said dishware basket interior from said horizontally extending basket struts and said dishware basket moves automatically from said upper height position into said lower height position; said adjustment lever 15 coupled to a spring 25 which biases said adjustment lever to swivel back in an opposite direction after said handle part is actuated in a first direction; said adjustment lever 15 swivel mounted near the upper edge of said basket support plate 7 in said recess facing a wall of said rinsing container;

and said adjustment lever 15 arranged on the side of said basket support plate; wherein said catch hook 17 having an undercut for adjusting the actuation force; said basket support plate provided at its ends with guide elements, such as shown in Fig 2, which at least partially enclose said vertical basket struts 12 of said dishware basket, wherein said adjustment lever 15 is attached with said rollers 9 on said basket support plate 7.

***Response to Arguments***

6. Applicant's arguments filed 7/5/2006 have been fully considered but they are not persuasive. In response to applicant's argument on page 9 that "Graute does not disclose an adjustment and a basket support plate that engage automatically when the dishware basket is moved from a lower height position into an upper height position...", the examiner takes the position that the claimed language fails to clearly recite what the lever and the support plate "engage automatically" to; further, the claimed language fails to clearly define what would consider to be or constitute an automatic engagement. The biased force of spring 25 disclosed by Graute would certainly facilitate an automatic engagement.

7. In response to applicant's argument on page 9 that the pivoting movement of the handle 15 of Graute "requires user intervention and is, thus, not an automatic engagement", the examiner takes the position that in order to adjust the height position of applicant's dishware basket from a first engaging position to a second engaging position, an actuation force is also needed to act upon applicant's adjustment lever to disengage; thus, the pivoting movement of the handle of Graute functions the same way

as applicant's claimed language of the automatic engagement of applicant's adjustment lever and basket support plate.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (571) 272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HVT *HVT*  
September 18, 2006

LANNA MAI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

